November 6, 1998

D.T.E. 98-52

A Complaint and Request for Hearing of A-R Cable Services, Inc., A-R Cable Partners, Cablevision of Framingham, Inc., Charter Communications, Greater Worcester Cablevision, Inc., MediaOne of Massachusetts, Inc., MediaOne of Pioneer Valley, Inc., MediaOne of Southern New England, Inc., MediaOne of Western New England, Inc., MediaOne Enterprises, Inc., MediaOne of New England, Inc., Pegasus Communications and Time Warner Cable pursuant to G.L. Chapter 166, § 25A and 220 C.M.R. § 45.04 of the Department's Procedural Rules seeking relief from alleged unlawful and unreasonable pole attachment fees imposed on Complainants by Massachusetts Electric Company.

APPEARANCES: Alan D. Mandl, Esq.
Ottenberg, Dunkless, Mandl & Mandl
260 Franklin Street
Boston, MA 02110

William D. Durand, Esq.
New England Cable Television Association, Inc.
100 Grandview Road
Braintree, MA 02184

FOR: A-R CABLE SERVICES, INC.
A-R CABLE PARTNERS
CABLEVISION OF FRAMINGHAM, INC.
CHARTER COMMUNICATIONS
GREATER WORCESTER CABLEVISION, INC.
MEDIAONE OF MASSACHUSETTS, INC.
MEDIAONE OF PIONEER VALLEY, INC.
MEDIAONE OF SOUTHERN NEW ENGLAND, INC.
MEDIAONE OF WESTERN NEW ENGLAND, INC.

MEDIAONE ENTERPRISES, INC.
MEDIAONE OF NEW ENGLAND, INC.
PEGASUS COMMUNICATIONS
TIME WARNER CABLE
Complainants

Thomas G. Robinson, Esq.
Paige Graening, Esq.
25 Research Drive
Westborough, MA 02158
FOR: MASSACHUSETTS ELECTRIC COMPANY
Respondent

Jeffrey N. Stevens, Esq.
Boston Edison Company
800 Boylston Street
Boston, Massachusetts 02199
FOR: BOSTON EDISON COMPANY
Limited Participant

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I. INTRODUCTION

On May 20, 1998, pursuant to G.L. c. 166, § 25A, and 220 C.M.R. §§ 45.00 et seq., A-R Cable Services, Inc., A-R Cable Partners, Cablevision of Framingham, Inc., Charter Communications, Greater Worcester Cablevision, Inc., MediaOne of Massachusetts, Inc., MediaOne of Pioneer Valley, Inc., MediaOne of Southern New England, Inc., MediaOne of Western New England, Inc., MediaOne Enterprises, Inc., MediaOne of New England, Inc., Pegasus Communications and Time Warner Cable (collectively, "Complainants") filed a Complaint and Request for a Hearing[1] with the Department of Telecommunications and Energy ("Department") against Massachusetts Electric Company ("MECo") seeking relief from MECo's cable television ("CATV") pole attachment rates. This matter was docketed as D.T.E. 98-52. Boston Edison Company was granted limited participant status in the proceeding. See Hearing Officer Ruling on Petition of Boston Edison Company for Leave to Participate as a Limited Participant, D.T.E. 98-52 (July 21, 1998).

The Complainants, fifteen CATV companies serving customers in several communities located in the MECo service territory, enter into license agreements for the use of CATV attachments on MECo-owned poles[2] (Exhs. Cable-3, at 2-3, 5, ex. 2-7; MECo-16, at 5, att. 2-3). On November 20, 1997, MECo notified the Complainants of an approximate 68 percent increase in its annual solely-owned ("SO") pole attachment rate to $15.81 and in its

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[1] The request for a hearing was made pursuant to 220 C.M.R. § 45.04(2)(g), which provides that the Complainants must request a hearing pursuant to 220 C.M.R. § 1.06, or waive the right to such a hearing.

[2] While certain of the poles in question are solely-owned by MECo, other poles are jointly-owned by MECo and New England Telephone and Telegraph Company d/b/a Bell Atlantic (Exhs. Cable-3, at 2; MECo-16, at 2).

annual jointly-owned ("JO") pole attachment rate to $7.91, effective February 1, 1998. That notification led to the present proceeding (Exhs. Cable-3, at 7; MECo-16, at 2; Cable-1, at 9-10).

MECo's proposed rates would replace those that were negotiated with the Complainants in 1994[3] (Exh. MECo-16, at 3). Specifically, the Complainants request that the Department grant the following relief: (1) order MECo to terminate its pole attachment rate pursuant to 220 C.M.R. § 45.07(1); (2) set an annual pole attachment rate effective February 1, 1998,[4] not exceeding the amounts of $8.98 per SO pole and $4.49 per JO pole pursuant to 220 C.M.R. § 45.07(2); (3) order MECo to refund, effective as of February 1, 1998, all amounts paid in excess of the maximum annual pole attachment rates that are established as a result of this proceeding; and (4) order MECo to refrain from acting, or refusing to act, in a manner that in any way prejudices Complainants' rights under their pole attachment agreements (Exh. Cable-3, at 12-13). On May 29, 1998, MECo filed a response to the complaint in which it denied that its current or proposed pole attachment rates are unlawful or unreasonable and asked that Complainants' requests for relief be denied (Exh. MECo-16, at 4-7).

In 1978, the Massachusetts Legislature enacted the "Pole Attachment Statute," St. 1978, c. 292, § 1, inserting G.L. c. 166, § 25A. This statute gives the Department the

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[3] A two-step rate increase was negotiated in 1994. That increase resulted in the current rates of $9.40 per SO pole and $4.70 per JO pole (Exh. MECo-16, at 3).

[4] Complainants and MECo have agreed that the pole attachment rates determined as a result of this proceeding will be effective as of February 1, 1998 (see Exhs. Cable-3, at Exh. 15; MECo-16, at Att. 1; Cable-1, at 10).

authority "to regulate the rates, terms and conditions applicable to attachments," as well as to "determine and enforce reasonable rates, terms and conditions of use of poles . . . ." As a result of a rulemaking proceeding, CATV Rulemaking, D.P.U. 930 (1984), the Department adopted the pole attachment dispute regulations now codified as 220 C.M.R. §§ 45.00 et seq. However, in CATV Rulemaking, supra, the Department declined to determine a specific method of calculation for pole attachment rates, instead leaving the method(s) to be determined by adjudication. Id. at 14-15. The method for determining pole attachment rates was set by the Department in a proceeding that considered the aerial pole attachment rates of Boston Edison Company. See Cablevision of Boston Inc., et als., D.P.U./D.T.E. 97-82 (1998) ("Cablevision"). This matter is the second aerial pole attachment complaint received pursuant to the pole attachment regulations and the first instance in which the Department has been asked to review MECo's pole attachment rates.[5]

Pursuant to notice duly issued, a public hearing was held at the Department's offices on June 23, 1998, to afford interested persons an opportunity to comment. Two days of evidentiary hearings were held at the Department's offices on August 10 and 12, 1998. In support of their complaint, the Complainants presented the testimony of one witness: Paul Glist, an attorney whose practice concentrates on pole attachment issues. MECo presented the testimony of three witnesses: (1) G. Paul Anundson, the overhead line coordinator for New

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[5] In Greater Media, Inc., D.P.U. 91-218 (1992), the Department approved a method for calculating rates for CATV attachments within underground conduit.

England Power Service Company ("NEPSCO")[6]; (2) Allen L. Clapp, an economist and licensed professional engineer; and (3) David M. Webster, a principal financial analyst in the rate department of NEPSCO. The evidentiary record consists of 16 exhibits sponsored by the Complainants, 21 exhibits sponsored by MECo, and 39 exhibits sponsored by the Department. The Complainants and MECo filed briefs and reply briefs.

II. PARTIAL SETTLEMENT

Complainants MediaOne of Massachusetts, Inc., MediaOne of Pioneer Valley Inc., MediaOne of Southern New England Inc., MediaOne of Western New England, Inc., MediaOne Enterprises, Inc., and MediaOne of New England, Inc. (collectively "MediaOne") executed a pole attachment license agreement with MECo on February 20, 1998 (Exh. Cable-3, at Exh. 4). Despite this executed license agreement, MediaOne alleges that an agreement was not reached on the new pole attachment rates because of unfair dealing on MECo's part. MediaOne stated that they believed that the negotiations for this new agreement only involved certain changes to MECo's overlashing provisions and the consolidation of three MECo-MediaOne licenses into one single agreement, and that the attachment rates would remain the same. When the new licence agreement was signed, however, MediaOne alleges that without its knowledge or consent, the agreement contained MECo's new higher pole attachment rate (Exh. Cable-3, at 8).

Complainant Greater Worcester Cablevision, Inc. ("Greater Worcester"), executed a pole attachment license agreement with MECo on March 17, 1998 (id. at Exh. 5). Greater

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[6] NEPSCO provides engineering and technical services for the subsidiary companies of New England Electric System, including MECo (Exh. MECo-16, at 93, 99).

Worcester alleges it signed this pole attachment license agreement "under duress," claiming that MECo refused to process certain new pole attachments in the absence of such agreement (id.).

Both MediaOne and Greater Worcester request that the Department terminate these pole attachment license agreements as unlawful (id. at 12). In its response, MECo denies that it refused to process any new license agreements on behalf of Greater Worcester and argues that these agreements should not be overturned as they were "spontaneously and voluntarily" executed by the Complainants (Exh. MECo-16, at 2, 5, 8).

On August 14, 1998, the parties filed an "Offer of Partial Settlement" ("Offer") agreeing to the following: (1) to "withdraw with prejudice" any allegations of duress and unfair dealing by MECo in the execution of MECo's current aerial license agreements with MediaOne and Greater Worcester; and (2) that, upon Department issuance of the final Order in this proceeding, MECo will charge, and Greater Worcester and MediaOne will pay, the pole attachment rates determined by the Department (Offer at ¶¶ 1, 2). By its terms, this Offer is subject to the approval of the Department without substantial change of its terms and conditions (id. at ¶ 3).

The Department hereby approves the parties' Offer of Partial Settlement. Acceptance by the Department of this partial settlement does not constitute a determination as to the merits of any allegations or contentions made in the proceeding.[7] In addition, the Department's

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[7] The Department has the authority to alter unreasonable or unjust pole attachment contractual rates, terms or conditions. Greater Media, Inc., D.P.U. 91-218, at 30-31 (1992). We caution, however, that faced with clear evidence of a negotiated pole attachment agreement signed since the issuance of the Department's final Order in

(continued...)

acceptance of this partial settlement has no precedential value with regard to future filings. See Western Massachusetts Electric Company, D.P.U. 92-13, at 7 (1992); Barnstable Water Company, D.P.U. 93-233-A at 4 (1994).

III. RATE METHOD

A. Jurisdiction and State Regulatory Background

Massachusetts possesses and exercises the authority to regulate pole attachment rates, terms and conditions at the state level. G.L. c. 166, § 25A; 220 C.M.R. §§ 45.00 et seq.; States That Have Certified That They Regulate Pole Attachments, Public Notice, 7 F.C.C. Rcd. 1498 (1992). The Massachusetts pole attachment statute provides the Department with authority to regulate the rates, terms, and conditions applicable to attachments and requires that the Department consider the interests of subscribers of CATV services as well as the interests of consumers of utility services. G.L. c. 166, § 25A. In determining a just and reasonable rate, the statute requires that the rate recover "the additional costs of making provisions for attachments" (i.e., marginal or incremental cost) and no more than "the proportional capital and operating expenses of the utility attributable to that portion of the pole…occupied by the attachment" (i.e., fully allocated cost). Id. Further, "[such]

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[7] (...continued)
Cablevision, all parties seeking relief should be prepared to present compelling reasons that would cause the Department to invalidate such contracts. The Department's authority under G.L. c. 166, § 25A is statutory and, unlike a court sitting in equity, not inherent. Just as courts are reluctant to use their equitable powers to reform or invalidate contracts freely entered into, so too is the Department disposed to be sparing in the exercise of its § 25A statutory power to intrude on commercial arrangements between large corporations – absent, of course, some compelling reason. Encouraging frequent resort to Department intervention to "remedy" commercial misjudgments would not be conducive to a competitive marketplace.

portion shall be computed by determining the percentage of the total usable space on a pole…that is occupied by the attachment." Id. The pole attachment regulations provide for a complaint proceeding[8] under which an attachment rate maximum can be determined through the use of data inputs from the Federal Communications Commission ("FCC") Form M (telephone company) or the Federal Energy Regulatory Commission ("FERC") Form 1 (electric company) annual reports. 220 C.M.R. § 45.04.

B. Massachusetts Formula

In the recent Cablevision case, the Department established a method to estimate the fully-allocated costs of pole attachments that is consistent with G.L. c. 166, § 25A and the related pole attachment regulations. Cablevision at 18. The Department's pole attachment formula reasonably balances the interests of subscribers of CATV services as well as the interests of consumers of utility services as required by G.L. c. 166, § 25A. Id. at 18-19. The Department's goal in adopting this pole attachment formula was to simplify the regulation of pole attachment rates as much as possible by adopting standards that rely upon publicly available data. Id. at 19. The Department's intent remains to have a simple, predictable, and expeditious procedure that will allow parties to calculate pole attachment rates without the need for Department intervention (see note 7, above). Negotiated rates are encouraged, with the parties coming to the Department for assistance only in circumstances where they fail to agree. Pole attachment complaint proceedings are not meant to be costly, full blown rate cases, but rather streamlined proceedings based on publicly available data.

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[8] Review by the Department of such a complaint can be conducted, at the election of the parties, without hearings. 220 C.M.R. § 45.06(1).

The Department's method is based on but not identical to the approach used by the FCC to regulate pole attachments in those states that have not asserted jurisdiction. Id. at 18. As we stated in Greater Media, the majority of the provisions in 220 C.M.R. § 45.00 mirror regulatory provisions enacted by the FCC. Greater Media, Inc., D.P.U. 91-218 (1992) at 28, ("Greater Media") citing 47 C.F.R. 1.1401, et seq. While we find it helpful to consider the manner in which issues raised in the instant proceeding have been addressed by the FCC, we are not bound by FCC interpretations and are free to depart from the federal method when justified on state policy grounds. See Cablevision at 18-19. We act under G.L. c. 166, § 25A, a Massachusetts statute.

IV. APPLICATION OF RATE METHOD

F. Introduction

The Department's method for calculating a fully allocated pole attachment rate involves three steps: (1) placing an average value on a utility's net investment in poles (i.e., the costs of bare poles and the costs to install the poles); (2) developing an annual carrying charge to recover the ongoing cost of poles (i.e., a utility's rate of return, depreciation, taxes, and administrative and maintenance expenses); and (3) allocating the costs among the utility and others using the pole to attach their lines and equipment. Id. at 16. In basic terms, the maximum pole attachment rate is equal to the product of the net investment per bare pole, multiplied by the carrying charge percentage, multiplied by the allocation factor. Id.

Within these three steps, the parties to the current proceeding contest the application of the following components of the Department's formula: (1) appurtenances; (2) accumulated

deferred taxes (FAS 109); (3) total distribution plant; (4) pole equivalents; and (5) allocation factor. Applying the Complainants' interpretation of the Department's pole attachment formula generates a yearly rate of $9.08 per attachment per SO pole and $4.54 per attachment per JO pole (Exh. Cable-1, at 4). Applying MECo's interpretation of the Department's pole attachment formula generates a yearly rate of $15.93 per attachment per SO pole and $7.96 per attachment per JO pole (Cable-RR-1, Att. 2, at 1).

B. Average Value of MECo Investment in Poles

1. Introduction

As an initial step in calculating a fully allocated rate, each of the parties calculates a value for MECo's net investment per bare pole. According to the Department's formula, a figure for net investment in bare pole plant is calculated by subtracting accumulated depreciation, accumulated deferred taxes, and the cost of appurtenances from gross pole investment. Cablevision at Table 1. Net investment in bare pole plant is then divided by the number of pole equivalents to generate a value for net pole investment per bare pole. Id.

All parties agree that the baseline for the calculation of net pole investment is $249,907,963, which is taken from Account 364 (Poles, Towers, Fixtures) of MECo's 1997 FERC Form 1 (Exh. MECo-5, at 206). The parties disagree, however, as to the proper amount of net pole investment to remove to account for appurtenances. The parties also disagree as to the proper methods to calculate accumulated deferred taxes and total distribution plant. Finally, the parties dispute the number of MECo's poles.

2. Appurtenances

a. Introduction

In addition to investment in poles, FERC Account 364 includes investments in items such as guys, anchors, crossarms, pole top pins, and other equipment that is attached to poles. A portion of this equipment, known as appurtenances, is of no use or benefit to the attaching parties and, therefore, needs to be deducted from Account 364 in order to determine the total net investment in poles.[9]

In Cablevision, the Department found reasonable an estimate or presumption that 15 percent of the total net pole investment represented investments in appurtenances that were not "used or useful to the attaching companies" and reduced the dollar amount of net pole investment allocated in the formula accordingly. Cablevision at 30. In Cablevision, an estimated figure proved necessary as Boston Edison did not provide a breakdown of FERC Account 364 to the subaccount level (Complainants' Brief at 33, n. 21). The Department's Order in Cablevision is silent as to whether the 15 percent presumption is a fixed adjustment or rather is a presumption which may be rebutted to reflect actual investment in appurtenances. In the instant case, MECo disputes the Complainants' attempt to alter or rebut the 15 percent presumption. Cablevision at 30.

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[9] For example, crossarms and transformer mounts are used for electrical equipment only and are appropriately excluded from the calculation of net pole investment. Investments in guys and anchors, however, are not excluded because this equipment stabilizes the poles for the benefit of all attaching companies. The exact benefits of other items such as pole-top pins is a subject of debate by the parties (Complainants' Reply Brief at 9, n. 6; MECo Brief at 5).

b. Positions of the Parties

i. Complainants

The Complainants argue that the Department should adopt 15 percent as a rebuttable presumption to be used in the absence of Account 364 subaccount data for pole investments (Complainants' Brief at 34). Based on MECo's Account 364 subaccount data, the Complainants argue that using the 15 percent presumption removes too little of the net pole investment from the pole attachment rate calculation (Complainants' Brief at 32). To rebut the 15 percent presumption, the Complainants use a method that they argue is accepted by the FCC and includes bare poles plus investment in guys and anchors in net pole investment. The Complainants' method removes all amounts in the "Completed Construction Not Classified"[10] account from net pole investment as a "trade off" for the inclusion of guys and anchors in net pole investment (id.). The Complainants' method results in a reduction of 26 percent to net pole investment to account for appurtenances (id. at 34-35).

ii. MECo

MECo argues that the Department should continue to use the 15 percent presumption for two reasons. First, MECo argues that the 15 percent presumption is intended to be a constant figure which represents the "best estimate" of net pole investment attributable to appurtenances (MECo Brief at 3-4). MECo argues that using a fixed 15 percent presumption will ease the application of the pole attachment formula by avoiding the need to decide

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[10] "Completed Construction Not Classified" is a FERC account that includes investment in distribution plant which has been completed and put in service, but has not yet been separated into the seven digit FERC accounts (see MECo-1; MECo-2; MECo-3; Tr. 2, at 11-14).

individually which appurtenances benefit CATV subscribers (MECo Reply Brief at 4). Alternatively, even if the Department were to consider the 15 percent presumption a rebuttable presumption, MECo argues that the Complainants incorrectly calculate their proposed appurtenance reduction (MECo Brief at 4). MECo states that the Complainants remove all "Completed Construction Not Classified" from their pole attachment rate calculation because they incorrectly assumed that this account is composed entirely of "unuseful appurtenances" (id.). MECo argues that the Complainants have erred because the "Completed Construction Not Classified" account also contains items that are useful to CATV companies such as poles, guys and anchors (id.). Assuming that the makeup of the "Completed Construction Not Classified" account is proportional to those investments already classified in Account 364, MECo argues that a more accurate appurtenance reduction would be 16.17 percent[11] (id. at 5).

c. Analysis and Findings

Both parties agree that 15 percent is the default presumption of investment in appurtenances to be used in the absence of Account 364 subaccount data (MECo Brief at 5; Complainants' Reply Brief at 8). The question that remains is whether or not this presumption is fixed or may be rebutted to substitute actual appurtenance investment data. The FCC has determined that the 15 percent figure used in its pole attachment formula is rebuttable if either party can present probative, direct evidence on the actual investment in non-pole related

[11] MECo also argues that the 16.17 percent reduction is an overstated figure as there are devices included in the calculation that provide a benefit to CATV companies, such as pole top pins (MECo Brief at 4). MECo, therefore, encourages the Department to maintain the use of a fixed 15 percent appurtenance reduction in this case (id.).

appurtenances. 2 F.C.C. Rcd at 4390 (1987). We also find that the presumed 15 percent default adjustment is rebuttable when sufficient Account 364 subaccount data for net pole investment demonstrates that actual investment in appurtenances is different from 15 percent. If a utility tracks Account 364 pole investment data at the subaccount level, a more accurate pole attachment rate can be determined. This subaccount information is publicly available and its use will not add any measure of complexity to the Department's rate setting formula. If a utility does not track Account 364 to the subaccount level, the use of a 15 percent appurtenance presumption is appropriate.

MECo's tracking of pole investment subaccount data in Account 364 permits us to replace the 15 percent presumption with an appurtenance adjustment that is more representative of its actual investment in appurtenances. We do not, however, adopt the method employed by the Complainants to rebut this presumption. We are not convinced, based on the evidence presented, that the Complainants have followed an "FCC-approved" method to rebut the appurtenance presumption. FCC precedent includes guys and anchors in net pole investment, as it has determined that these items benefit all pole users. 2 F.C.C. Rcd at 4390 (1987).

Further, the Department finds that there is no evidence to suggest that the "Completed Construction Not Classified" account is composed of appurtenances in any different proportion than those investments contained in FERC Account 364 that have already been classified.

Therefore, "Completed Construction Not Classified" shall not be incorporated when rebutting the 15 percent presumption as this would have no impact on the result.[12] The proper method for rebutting the 15 percent appurtenance presumption is to subtract the investment in poles, guys and anchors in FERC Account 364 from the total classified utility plant in Account 364. This result is then divided by the total classified utility plant in FERC Account 364 to determine the total investment in appurtenances.

Using the detailed subaccount data in MECo's 1997 FERC Form 1 yields an appurtenance adjustment of 16.17 percent.[13] Subtracting 16.17 percent, or $23,869,225, from the net pole investment figure of $147,614,255, results in a net bare pole investment figure of $123,745,030, as shown in Table 1, below.

3. Accumulated Deferred Taxes

a. Introduction

The parties disagree as to the proper method to calculate accumulated deferred taxes for poles. While both MECo and the Complainants propose that deferred taxes be calculated by using the net of accumulated deferred taxes in FERC Accounts 190, 281, 282, and 283, the

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[12] Given our presumption that the "Completed Construction Not Classified" account is composed of appurtenances in the same proportion as those investments already classified in Account 364, if "Completed Construction Not Classified" was included in the calculation, both the numerator and denominator in the appurtenance portion of the Department's formula would be increased by values that are of equivalent proportions.

[13] This value is calculated by subtracting the investment in poles, guys and anchors in Account 364 ($183,557,448.78) from the total classified utility plant in Account 364, ($218,956,542.06) and dividing the result by the total classified utility plant in Account 364.

parties disagree regarding the treatment of a Financial Accounting Standard Number 109 ("FAS 109")[14] adjustment (Exhs. MECo-13, at 66; Cable-1, at 18).

b. Positions of the Parties

i. Complainants

The Complainants argue that MECo moves away from the standard calculation of accumulated deferred taxes by making a selective ratemaking adjustment for FAS 109 (Complainants' Brief at 40). Based on a guidance letter issued by FERC's chief accountant, the Complainants claim that FAS 109 should have no ratemaking consequences (Complainants' Brief at 40, citing FERC, Accounting for Income Taxes (April 23, 1993)).

Complainants argue that MECo is attempting to "cherry pick" and manipulate pole formula accounting practices, which, if allowed, will lead to more frequent efforts by parties to stray from the application of the Department's "simple, efficient and predictable formula" in future cases (id.). The Complainants argue that, if this selective FAS 109 adjustment is allowed, then other items such as construction work in progress, allowance for funds used during construction, projected changes in tax rates, and reported balances of plant in service will also have to be adjusted (Exh. Cable-1, at 19). The Complainants argue that these selective ratemaking adjustments would undermine the benefit of having a pole attachment formula that is "straightforward and self-executing" (Complainants' Brief at 42). Finally, the

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[14] According to the Complainants, FAS 109 is an accounting practice that "attempts to account for accumulated deferred income taxes in a manner that accounts for all timing differences, looking forward to the likelihood of recovery from ratepayers and changes in levels of taxation" (Complainants' Brief at 40, citing Tr. 1, at 29-30).

Complainants argue that a FAS 109 adjustment is not permitted under either the FCC or the Department's pole attachment precedent (Complainants' Brief at 40).

ii. MECo

MECo states that FAS 109 requires that temporary differences in income taxes be recorded through assets and liabilities on its balance sheet (MECo Brief at 5). Consequently, MECo argues that an equal and offsetting regulatory asset must be established so that the net effect of the FAS 109 adjustment will have no net effect on its books (id. at 5-6). According to MECo, the plant balances used to calculate the Complainants' proposed pole attachment rate do not include this equal and offsetting regulatory asset. Therefore, MECo argues that a deferred tax adjustment is necessary to ensure that FAS 109 does not affect the pole attachment rate (MECo Brief at 5-6, citing Exh. MECo-13, at 66-68; Exh. MECo-14, at 159-71).

c. Analysis and Findings

Not all utilities report FAS 109 adjustments on the FERC Form 1. In fact, in Cablevision, the FAS 109 adjustment was not at issue because Boston Edison's 1995 FERC Form 1 did not include any amounts for corresponding FAS 109 adjustments. We find that MECo's proposed FAS 109 adjustment would have a minimal impact on the resulting pole attachment rate. Because of the inconsistencies among utilities in reporting FAS 109 adjustments, and the minimal effect such adjustments would have on the ultimate pole attachment rate, we find that making this type of adjustment would improve little, if any, the accuracy of the Department's pole attachment formula. Further, we find that making selective adjustments, such as FAS 109, would be akin to conducting a full rate proceeding with every

pole attachment complaint. Making selective adjustments contravenes the important policy goal of having a straightforward, self-executing formula to determine pole attachment rates. Therefore, the Department finds that the calculation of accumulated deferred taxes shall be made without any adjustment relating to FAS 109.

4. Total Distribution Plant

a. Introduction

Total distribution plant is used to allocate a corresponding amount of accumulated depreciation to net investment in poles. All other things being equal, if we reduce the amount of total distribution plant, then the amount of accumulated deprecation will increase, resulting in a smaller net pole investment with a corresponding lower pole attachment rate.

b. Positions of the Parties

i. Complainants

The Complainants do not address this issue in their initial or reply briefs. Their petition, however, calculates total distribution plant without any adjustments.

ii. MECo

MECo argues that total distribution plant must be decreased to reflect the fact that land and land rights are not depreciable items (Exh. MECo-13, at 63-65).

c. Analysis and Findings

A proposed total distribution plant adjustment was not at issue in the Cablevision case. As stated above, incorporating selective adjustments in each pole attachment rate proceeding risks turning them into full rate cases instead of streamlined proceedings based on a simple and predictable formula. We have found that the Department's streamlined formula adequately

balances the interests of utility ratepayers and CATV subscribers and is consistent with the statute and regulations governing pole attachments. See G.L. c. 166, § 25A; 220 C.M.R. §§ 45.00 et seq.; Cablevision at 18-19.

We find that this distribution plant adjustment has but minimal effect on the ultimate pole attachment rate. Making this adjustment would add little, if any, accuracy to the Department's pole attachment formula. Instead, making this type of adjustment jeopardizes the Department's important policy goal of having a predictable, self-executing formula to determine pole attachment rates. Therefore, we find that total distribution plant found in FERC Form 1[15] with no additional adjustment, is appropriate for calculating the amount of distribution plant related to poles.

5. Calculation of Pole Equivalents

a. Introduction

Pole equivalents are the adjusted number of poles that MECo owns in full or in part.[16] The method for calculating the number of pole equivalents, which has been agreed to by the parties, involves summing the solely-owned MECo poles and adding in 50 percent of MECo's jointly-owned poles. The parties disagree, however, on two adjustments involving the types of poles that should be included when determining the number of pole equivalents.

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15 FERC Form 1 at page 207, line 69.

16 The pole count must be adjusted to account for the fact that a percentage of the poles are jointly owned by the utility and other entities.

b. Positions of the Parties

i. Complainants

The Complainants' petition incorporated 339,526 pole equivalents in their calculation of the pole attachment rate (Exh. MECo-16, at Exh. 11). The Complainants accepted MECo's adjustment to the pole count contained in their petition (335,486 pole equivalents), which removed certain poles not owned by MECo and accounted for empty locations (Complainants' Brief at 37). The Complainants dispute any further adjustments in the pole count made by MECo, arguing that MECo bears a "special responsibility" to provide accurate pole count data upon which the negotiating parties can rely (id. at 38). The Complainants state that since one of these additional adjustments was made after MECo's original response to the Complainants' petition and the other was made after the close of hearings and, thus, was not subject to cross-examination, these additional adjustments in pole count should be disallowed (id. at 38-39). Therefore, the Complainants argue that the Department should use 335,486 as the total number of pole equivalents in its calculation of the pole attachment rate (id. at 39).

ii. MECo

In its response to the Complainants' petition, MECo incorporated 335,486 pole equivalents into its calculation of the pole attachment rate (Exh. MECo-16, at 106). During the course of evidentiary hearings, MECo reduced its total pole equivalents by 6,103 to remove wood poles that are only associated with transmission and street lighting purposes and metal poles (Exh. MECo-14, at 150). MECo alleges that the removal of the transmission and street lighting poles is justified because the investment in these poles is not included in FERC Account 364 (Exh. MECo-13, at 60-61).

MECo originally argued that the metal poles should be removed from the calculation because they do not contain third party attachments (Tr. 2, at 30). However, in the course of responding to a record request, MECo discovered that there are a number of metal poles in its inventory that contain CATV attachments (RR-Cable-1). Accounting for these metal poles, MECo has added back 1,002 pole equivalents (id.). As a final result of these adjustments, MECo uses 330,385 pole equivalents when calculating its pole attachment rate (id. at Att. 1).

c. Analysis and Findings

MECo's first adjustment to pole equivalents, which removed metal poles and wood poles used for transmission and street lighting, was made well in advance of hearings and the Complainants had sufficient opportunity to explore this adjustment (see Tr. 2, at 13-29). The Department's review of MECo's 1997 FERC Form 1 indicates that wood poles used strictly for transmission and street lighting purposes are not included in FERC Account 364[17] (Exh. MECo-5). As such, we find it reasonable to reduce MECo's original pole equivalent total by 6,103 to account for metal poles and wood poles used for solely for transmission and streetlighting.

MECo's second adjustment to pole equivalents, which added back in metal poles to the pole equivalent calculation, was made after the close of hearings in response to a record request. The Department agrees that MECo bears a responsibility to provide pole count data that are complete and accurate and finds that it has done so by making this second adjustment to the pole equivalent calculation. Although we are concerned about the late timing of this

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[17] According to MECo's FERC Form 1, investment in transmission poles is included in Account 355 and investment in street lighting poles is included in Account 373 (Exh. MECo-5, at 206).

adjustment, we find that further discovery or cross-examination on this issue would not have had any impact on the accuracy of MECo's pole equivalent calculation. There is no evidence to suggest that MECo's pole counts are incorrect or inflated for the purpose of this proceeding. The most accurate pole attachment rate includes all pole types that contain or could contain third party attachments. As such, we find it reasonable to increase MECo's pole equivalent total by 1,002 to account for these poles.[18]

Based on the findings above, the Department will use 330,385 as the number of total pole equivalents in the calculation of the pole attachment rate. Using this figure for total pole equivalents and the net investment in bare pole plant of $123,745,030 results in a net investment per bare pole of $374.55, as shown in Table 1, below.

C. Annual Carrying Charge Rate

In the second step of the formula, an annual carrying charge rate must be calculated. The Department's formula calculates the total carrying charge by adding an administrative carrying charge, a maintenance carrying charge, a depreciation carrying charge, a tax carrying charge, and a rate of return. Cablevision at 32-39. The parties agree on the method used to calculate these charges. However, each party's actual carrying charge differs because they use different inputs for accumulated deferred taxes and total distribution plant, as discussed in Sections IV(3) and IV(4) above. Based on our findings regarding accumulated deferred taxes and total distribution plant discussed above, the Department finds that the correct annual carrying charge rate is 38.14 percent, as shown in Table 1, below.

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[18] We note that MECo has made the appropriate adjustments to its total gross investment in pole plant (Account 364) to reflect accurately the inclusion of the metal distribution poles.

D. Cost Allocation

1. Introduction

After placing an average value on a utility's investment in poles and developing an annual carrying charge to recover the ongoing costs of poles, the third step in determining a fully allocated pole attachment rate involves calculating an "allocation factor" or "usage factor" to allocate the costs among the utility and others using the pole to attach their conductors. According to the Department's formula, the usage factor is equal to the assumed CATV attachment space divided by the usable space on a pole. Cablevision at 43-44. Usable space is defined by statute as "the total space which would be available for attachments, without regard to attachments previously made: (i) upon a pole above the lowest permissible point of attachment of a wire or a cable upon such pole which will result in compliance with any applicable law, regulation, or electrical safety code . . . ." G.L. c. 166, § 25A. The Department's formula assumes one foot per attachment for CATV attachment space and a rebuttable presumption of 13.5 feet for usable space.[19] Cablevision at 43-44.

The parties dispute whether the "neutral zone" and the top five inches of the pole should be considered usable space for pole attachment ratemaking purposes. The "neutral zone" is approximately 40 inches of clearance space on a pole between the lowest attachment in the power supply space and the highest attachment in the communication space (Exh. MECo-16, at 35-36). The power supply space, which is located at the top of the pole, is the space where the electric company attaches its conductors (Exh. MECo-7). The

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[19] 13.5 feet is the average usable space between a 35 foot pole and a 40 foot pole, which have 11 feet and 16 feet of usable space, respectively, assuming a minimum attachment height of 18 feet and a burial depth of 10 percent of the pole height plus two feet.

communication space, which is located below the power supply space and the neutral zone, is where CATV and telephone attachments typically are made, with CATV attachments usually located above telephone attachments (id.).

2. Positions of Parties

a. Complainants

The Complainants argue that the "principle of reasoned consistency" compels the Department to not change its usable space determination set out in Cablevision (Complainants' Brief at 17). The Complainants maintain that the assignment of the neutral zone to usable space is well supported by legal and factual grounds (id. at 18).

The Complainants argue that the Massachusetts pole attachment statue (G.L. c. 166, § 25A) and the Department's pole attachment regulations (220 C.M.R. §§ 45.00 et seq.) define "usable space" as "the total space which would be available for attachments… upon a pole above the lowest permissible point of attachment of a wire or cable" (id. at 18). Further, they argue that the pole attachment statute defines "attachments" as including wires and cables as well as any related device, apparatus, appliance or equipment installed upon any pole (id.). Following these definitions, the Complainants argue that the neutral zone is usable space as it is "space above the lowest permissible point of attachment that is available for attachments under Massachusetts law" (id. at 18-19).

As further support that the neutral zone is usable space, the Complainants argue that MECo actually uses the neutral zone for attachments such as streetlights, floodlights, and traffic signals (Complainants' Brief at 19, citing Exh. Cable-9; Tr. 1, at 99-101; Tr. 2, at 42). Just as MECo argues that the neutral zone benefits CATV workers by providing them with a

safety clearance space, the Complainants argue that the neutral zone exists to separate electric facilities from conductors of differing voltages and applications, providing "leg room" or safety space for electric utility employees working on electric facilities on poles (id. at 20, citing Exhs. Cable-1, at 24; Cable-2, at 293-294; Tr. 1, at 120). The Complainants also argue that the neutral zone provides additional clearance for electric conductors carrying ice loads (id.). Lastly, the Complainants allege that the neutral zone provides vertical clearance space required by electric companies to maintain minimum clearance above grade (id. at 20, citing Exh. Cable-1, at 24-25).

Based on the above, the Complainants urge the Department not to depart from our recent precedent in Cablevision and to apply the presumption of 13.5 feet of usable space in the present case (Complainants' Brief at 15-32). As an alternative, however, the Complainants argue that if MECo had correctly "rebutted" the usable space presumption according to the Department precedent using a statistical analysis or projections based on actual pole surveys, we should find that the average amount of usable space on MECo's poles is 12.82 feet (id., citing Exh. Cable-1, at 26-27).

The Complainants also assert that the principle of reasoned consistency compels the Department not to change its decision in Cablevision treating the top five inches of the pole as usable space (id. at 27-28). Like the neutral zone, the Complainants argue that the Department's assignment of pole top space to usable space is consistent with the Massachusetts statute and regulations governing poles. The Complainants state "[i]f the Department were to accept the theory animating Massachusetts Electric's argument to eliminate five inches of pole top space from usable space, the same logic necessarily would require the Department to

reduce the allocation ratio used to determine a cable operator's costs for attaching to a utility pole" (id. at 29). In other words, the Complainants argue that since CATV attachments occupy only 1.5 inches of pole space rather than the 12 inches they are allotted, a consistent application of this "actual use" theory would result in a use ratio of 1.5 inches/9 feet for cable attachments, which is less than the Department's allocation ratio of 1 foot/13.5 feet (id.). The Complainants agree that while such a result would be consistent with MECo's reasoning, it would contradict the assignment of usable space already approved by the Department and the FCC and, therefore, should not be allowed (id.).

b. MECo

MECo urges the Department to change the formula that was established in Cablevision, (or in its words, attempts to "rebut" the usable space presumption), arguing that the neutral zone should not be considered as usable space for several reasons. MECo argues that the neutral zone is necessary to maintain the proper clearance between the power supply space and the communication space, as required by the National Electrical Safety Code ("NESC"), to allow communication entities to attach to the same poles that carry electrical conductors (MECo Brief at 7-8, citing Exhs. MECo-14, at 123, 135; MECo-16, at 35-36). MECo states that its construction practices and procedures conform to the NESC as the recognized authoritative set of rules governing electric distribution systems (id. at 7, citing Exhs. MECo-16, at 35; DTE-23).

MECo contends that by maintaining the neutral zone on poles, CATV operators avoid major costs, such as duplicate pole investment, extensive worker training, and investment in equipment such as insulated bucket trucks (MECo Brief at 8). MECo argues that while it is

required to grant access to its poles, it is not required to maintain a neutral zone or worker safety space (id. at 8-9). MECo alleges that the neutral zone does not exist because of a need for street lighting space on poles, but rather it exists to benefit CATV operators by providing worker safety space, thereby reducing CATV attachment costs (id. at 9).

MECo notes that some jurisdictions, such as Maine, Kentucky and Wisconsin, have ruled that the neutral zone exists to benefit attaching parties (id. at 9-12, citing Proposed Amendment to Chap. 88, Attachments to Joint-Use Utility Poles; Determination and Allocation of Costs; Procedure (ch. 880), Docket No. 93-087 (May 13, 1993); Application of Northern States Power Co. for Authority to Increase Retail Electric Rates, Wisc. PSC, 4220-ER-14, 1981 Wisc. PUC Lexis 73, 12 (1981); Consumer Power Co., et al., 1997 Mich. PSC Lexis 26, 53 (1997)). MECo states that the FCC is currently considering a change in its position with respect to usable space and, although it is not known when the FCC will rule on this issue, MECo encourages the Department not to delay ruling that the neutral zone is not usable space (id. at 12).

Lastly, MECo states that if the Department finds that the worker safety space is usable, then MECo will amend its policies to allow CATV attachments in the safety space (MECo Reply Brief at 9). By doing so, MECo contends that the Complainants will "quickly realize" that attaching in the worker safety space is more expensive as it requires more extensive training for CATV workers to meet NESC requirements (id.).

MECo also urges the Department to reconsider its earlier ruling in Cablevision and hold that the top five inches of a pole are not usable space for pole attachment ratemaking purposes. MECo claims that attachments cannot be made to the top five inches of the pole

without causing the pole to split (MECo Brief at 6, citing Exh. MECo-16, at 14; MECo Reply Brief at 6-7). MECo argues that this space is not usable since no party can attach to the top five inches of the pole (id.).

3. Analysis and Findings

While not addressed directly in the Department's Order in Cablevision, the Department's adoption of a pole attachment rate formula that provides a use ratio of 1/13.5 feet contains within it the assignment of the "neutral zone" and pole top as usable space. The Department's formula does allow a utility to rebut the usable space presumption by presenting statistical evidence of a material difference in pole heights and clearances. By attempting to change the assignment of the "neutral zone" and pole top to unusable space, MECo has proposed to change the Department approved formula rather than rebut the usable space presumption based on statistical evidence.

In Cablevision, we stated that the "presumption of 13.5 feet may be rebutted if a company provides credible evidence, in the form of a statistical analysis or projections using actual pole surveys, that its average usable space is materially different from 13.5 feet." Cablevision at 43-44. The presumption of 13.5 feet is calculated from the average usable space between a 35 foot and 40 foot pole. The rebuttable presumption allows a distribution company whose poles may not be fairly represented by a 35 foot and 40 foot pole the opportunity to provide the Department credible evidence, such as an actual pole survey, to determine the appropriate pole height to use in the formula. This presumption of 13.5 feet, however, is calculated based on the Department's implied finding that the pole top and neutral

zone are usable space. These findings are consistent with the FCC precedent on which the Department's formula is based. See 2 FCC Rcd at 4387 (1987).

We find that the evidence presented in this case is not sufficient to warrant altering the Department's prior finding that the neutral zone and pole top are "usable" for pole attachment ratemaking purposes. The Department's current interpretation of the pole top and neutral zone as usable space is consistent with the Massachusetts statutes and regulations governing pole attachments. MECo argues that it does not use the neutral zone for attachments as a matter of common practice and, accordingly, the neutral zone is not usable space. We disagree. The record evidence shows that MECo makes use of the neutral zone for mounting street light support brackets and other related equipment (Exh. Cable-9; Tr. 2, at 42). And while MECo does not currently use the neutral zone for CATV attachments, the use of this space for attachments may become desirable or necessary in the near future as electric utilities and other companies enter the communications industry and require attachment space on increasingly crowded poles. The issue we must resolve is not whether the space is actually used, but whether it is usable. General Laws c. 166, § 25A defines "usable space" as "the total space which would be available for attachments . . . upon a pole above the lowest permissible point of attachment of a wire or cable." Further, the pole attachment statute defines "attachments" as including wires and cables as well as any related device, apparatus, appliance or equipment installed upon any pole. G.L. c. 166, § 25A. The FCC has determined that "street light brackets, transformers and the like are associated equipment" within the meaning of the provision of Section 224(d)(2) of the Telecommunications Act of 1996 (the language of which parallels the Massachusetts pole attachment statute).

See In re: Adoption of Rules for the Regulation of CATV Attachments, 77 F.C.C. 2d 187, 190 (1980). For these reasons, the Department believes that our initial determination of the neutral zone as usable space is sound.

The determination of the maximum lawful pole attachment rate is a reasonably simple and straightforward matter that the parties can ascertain for themselves without Department intervention. This will not be the case should we adopt a case-by-case allocation of usable space as requested by MECo.

The Complainants' raise the alternative of rebutting the Department's usable space presumption using MECo's actual pole survey data. MECo's data indicating the number of poles of various heights in its distribution plant used for CATV attachments allows us to accept the Complainant's alternative, consistent with Department precedent of the usable space presumption, and to replace it with a weighted average of MECo's usable space on its poles. Therefore, we find that 12.82 feet is the average usable space on MECo's poles.[20]

V. CONCLUSION

Multiplying the allocation factor found in Section IV(D), by the carrying charge rate found in Section IV(C), by the net investment per bare pole found in Section IV(B), the Department finds that the maximum lawful pole attachment rate MECo may charge the Complainants is $11.14 for SO poles and $5.57 for JO poles, as shown in Table 1, below.

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[20] The average usable space of 12.82 feet is determined by subtracting the average height of a MECo pole with CATV attachments (36.47 feet) from the sum of the minimum attachment height (18 feet) and the burial depth (5.647 feet). The burial depth is determined by adding two feet to ten percent of the average pole height (Exh. Cable-1, at 26-27).

A. Interests of MECo Ratepayers and CATV Subscribers

In resolving complaints from attachers, the Department is required to balance both the interests of utility ratepayers and CATV subscribers. G.L. c.166, § 25A. The Department finds the rate shown in Table 1 is reasonable and will not impose a financial disruption on the subscribers of CATV services or MECo ratepayers.

MECo's pole attachment rates currently cost CATV subscribers approximately 22 cents per month on an average monthly CATV bill of $28.01, or 0.79 percent of the total bill (Exh. MECo-14, at attached Table). A straight pass through of the Department's rate would increase this amount to approximately 27 cents per month, or 0.95 percent of the average monthly CATV bill. While this pass through would amount to an increase of approximately 5 cents to this component of the average CATV bill, the Department finds that the overall impact on CATV subscribers will be minimal because the pole attachment cost is such a small component of a CATV bill. With respect to MECo ratepayers, since the attachment rate is increasing, the Department finds that the new rate will have no adverse effect on MECo ratepayers.

B. Effective Date of Relief

In Greater Media, in order to encourage the timely filing of complaints, we held that the new conduit rate would be effective on the date the complaint was filed, but refused to grant refunds prior to that date. Greater Media at 30. The pole attachment statute does not require any retroactive relief; however "it does confer broad authority on the department to determine reasonable rates and provide remedies to enforce them." Greater Media, Inc. v. Department of Public Utilities, 415 Mass. 409 at 419 (1993). On appeal, the Supreme Judicial

Court held that "the method that the department chose to determine and enforce its rates is consistent with this general grant of authority." Id.

In the present case, although the complaint was filed on May 20, 1998, the parties have agreed that the relief, if any, to which Complainants are found to be entitled to will relate back to February 1, 1998 (Exhs. Cable-3, at Exh. 15; MECo-16 , at Att. 1; Cable-1, at 10). By agreement of the parties, the new rates established in this Order are effective as of February 1, 1998.

VI. TABLE 1

Net Investment Per Pole		Source
Total Gross Investment in Pole Plant	$249,907,963	FERC Form 1 Account 364
Accumulated Depreciation (Poles)	$73,893,051	(B) = (KK) * (LL)
Accumulated Deferred Taxes (Poles)	$28,400,657	(C) = (MM) * (LL)
Net Investment in Pole Plant	$147,614,255	(D) = (A) - (B) - (C)
Net Investment in Appurtenance	$23,869,225	(E) = (D) * (.1617)
Net Investment in Bare Pole Plant	$123,745,030	(F) = (D) - (E)
Number of Poles Equivalents	330,385	RR-Cable-1, Att. 1, at 1
Net Invest. Per Bare Pole	$374.55	(H) = (F) / (G)

Carrying Charges

Administrative		
Administrative Expense	$74,522,378	FERC Form 1 Accounts 920 - 935
Total Plant in Service	$1,578,525,152	FERC Form 1, at 200
Depreciation Reserve for Total Plant in Service	$465,796,341	FERC Form 1, at 200
Accumulated Deferred Taxes	$179,390,646	FERC Form 1 Accounts 281 - 283 and 190
Net Plant in Service	$933,338,165	(M) = (J) - (K) - (L)
Administrative Carrying Charge	7.98%	(N) = (I) / (M)

Taxes		
Normalized Tax Expense	$73,597,816	FERC Form 1 Accounts 408 - 411
Total Plant in Service	$1,578,525,152	(P) = (J)
Depreciation Reserve for Total Plant in Service	$465,796,341	(Q) = (K)
Accumulated Deferred Taxes	$179,390,646	(R) = (L)
Net Plant in Service	$933,338,165	(S) = (P) - (Q) - (R)
Tax Carrying Charge	7.89%	(T) = (O) / (S)

Maintenance		
Maintenance Expense	$25,254,198	FERC Form 1 Account 593
Net Investment in Poles	$410,897,314	(V) = (FERC Accounts 364, 365, 369) - (KK) - (MM)
Maintenance Charge	6.15%	(W) = (U) / (V)

Depreciation		
Annual Depreciation for Poles	4.00%	FERC Form 1
Gross Investment in Pole Plant	$249,907,963	(Y) = (A)
Net Investment in Poles	$147,614,255	(Z) = (D)
Gross/Net Adjustment	169.30%	(AA) = (Y) / (Z)
Depreciation Carrying Charge	6.77%	(BB) = (X) * (AA)

Return		
Rate of Return	9.35%	RR-Cable-1, Att. 1 at 5

Allocation of Usable Space		
Assumed Cable Attachment Space	1	Cablevision at 43-44.
Usable Space	12.82	See supra note 19.
Usage Factor	7.80%	(FF) = (DD) / (EE)

Pole Attachment Rate		
Net Investment per Bare Pole	$374.55	(GG) = (H)
Total Carrying Charge	38.14%	(HH) = (N)+(T)+(W)+(BB)+(CC)
Usage Factor	7.80%	(II) = (FF)
Calculated Rate	$11.14	(JJ) = (GG)*(HH)*(II)

$$\frac{\sum \text{FERC Accounts 364, 365, 369} * \text{Accumulated Depreciation for Distribution}}{\text{Total Distribution Plant}} = \frac{\$695,640,883 * \$446,517,793}{\$1,510,133,227}$$

$$\frac{364}{\sum \text{FERC Accounts 364, 365, 369}} = \frac{\$249,907,963}{\$695,640,883}$$

$$\frac{\sum \text{FERC Accounts 364, 365, 369} * \text{Accumulated Deferred Taxes}}{\text{Total Electric Plant}} = \frac{\$695,640,883 * \$179,390,646}{\$1,578,525,152}$$

VII. ORDER

Accordingly, after due notice, hearing and consideration, it is hereby

ORDERED: That Massachusetts Electric Company shall modify its license agreements with A-R Cable Services, Inc., A-R Cable Partners, Cablevision of Framingham, Inc., Charter Communications, Greater Worcester Cablevision, Inc., MediaOne of Massachusetts, Inc., MediaOne of Pioneer Valley, Inc., MediaOne of Southern New England, Inc., MediaOne of Western New England, Inc., MediaOne Enterprises, Inc., MediaOne of New England, Inc., Pegasus Communications and Time Warner Cable to incorporate a rate of $11.14 per attachment for solely-owned poles, and a rate of $5.57 per attachment for jointly-owned poles, and that said rates shall be effective, by agreement of the parties, as of February 1, 1998.

By Order of the Department,

_____
Janet Gail Besser, Chair

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James Connelly, Commissioner

_____
W. Robert Keating, Commissioner

_____
Paul B. Vasington, Commissioner

_____
Eugene J. Sullivan, Jr., Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part. Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).